THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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WRIT PETITION NO.9045 OF 2004

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ORDER:

Heard the counsel on either side and at their request the main writ petition itself is taken up for disposal.

The petitioner herein, who is an existing dealer and holder of authorization for running petrol bunk, filed this writ petition, inter alia, seeking writ of Mandamus challenging the action of the respondents herein in starting a petrol bunk in Sy.Nos.225, 226/A, 226/AA & 227 situated at Kanteshwar , Nizamabad District, as illegal, arbitrary and violative of Articles 14 and 21 of the constitution of India, apart from being contrary to the provisions of the National High Ways Authority Act, 1988 and the rules made thereunder and consequently seeking not to start any such retail outlet in the said premises. Initially the Writ Petition was filed only against respondent Nos.1 to 4 and thereafter respondent Nos.5 to 9 have been impleaded at the instance of writ petitioner herself.

The case of the petitioner in brief is that she is having a retail outlet dealership in Indian Oil Corporation at Kanteshwar, which is being under the name and style of M/s.Prakash Auto Service, which was given under the freedom fighters quota in favour of her father-in-law. After his death, the said outlet was being run by her husband, who expired on 15-04-2001 and subsequent to which the petitioner is running the said outlet and it is also stated that except that the petitioner does not have any other source of income. The complaint of the petitioner is that the respondent No.1 is intending to start a retail outlet for sale of petrol and diesel in the aforesaid land and accordingly after filing an application by him, the authorities have granted no objection certificates for setting up such retail outlet. Thereafter, the respondent No.1 has started the excavation work and other works. The main objection on the part of the petitioner is that having regard to the existence of retail outlet of the petitioner already on the National Highway 16, establishment of any new and fresh outlet within 1 km on the same highway is wholly unsustainable. Further, in view of the heavy traffic and occurrence of several traffic jams intermittently and existence of schools, function halls and two engineering colleges,

two big temples etc., it is not feasible to have one more petrol bunk in the vicinity and which not only create traffic problem but also cause several hazards. It is also her case that said new petrol bunk is sought to be established at the behest of certain individuals, who are inimical towards her. Further, it is pointed out that such establishment of a bunk is in the teeth of the provisions of the National Highway Act and also guidelines issued including the proceedings dated 25-09-2003, which contemplates that no new fuel station can be installed within 100 meters from an intersection on the National Highway, whereas the said site clearly falls well within the prohibited limitations from more than one intersection. It is her case that eventhough she has pointed out all these aspects and difficulties to the respondent-authorities, however no action has been taken. It was further pointed out that having regard to the traffic, existing road of 6.7 meters has been widened to 10 meters on the said National Highway No.16 from 0/0 km to 4/0 km. Further it is also pointed out that even at other places the respondents in disregard to the guidelines are permitting the establishment of petrol bunks, especially at Ankapur, Morthad and Velpur on the National Highway. Therefore, it is her case that clauses 10.6 to 10.10 of the directions have to be complied before energiging the petrol bunk. In view of the same, the petitioner tries to bring her case within the mischief of Article 14 of the Constitution of India. Hence, the Writ Petition.

In the counter-affidavit filed by the 4th respondent herein, viz., Executive Engineer, National Highway Authority of India, Nizamabad District, which was sworn to by the concerned executive incharge, it has been specifically averred that the said road has been taken for from R&B division by the National Highways Authority in the year 1989-1990 and the said land in Sy.No.225, 226/AA and 227 are situated at Kanteshwar, Nizamabad and infact no permission is granted from the office for setting up of petrol pump within 1 km. It is further submitted that no proposals are submitted to the Chief Engineer (R&B), National Highways, Hyderabad for recommending to accord the permission for setting up of petrol pump, nor any such permission has been granted. It was further pointed out that in fact the proposals, which have been received from various companies, were returned with a request to resubmit the proposals duly attending the norms of the MORTH guidelines and therefore, question of granting permission does not arise.

Repelling the petitioner's claim the case of the contesting respondents, in whose favour the fresh permission is granted, is that both the said respondents have

applied for dealership and retail outlet at Kanteshwar, Nizamabad District on 18-12-2002 and in pursuance of interview held on 20-12-2002 at Chennai, they have offered the aforesaid land on long term lease in pursuance of letter dated 14-02-2004. Subsequently, they obtained no objection certificate from the Collector and District Magistrate as per the directions of the petroleum rules framed under the Petroleum Act, along with the plan and which was addressed to the Superintendent of Police, Nizamabad, the Revenue Divisional Officer, Nizamabad, the Assistant Divisional Fire Officer, Nizamabad, Village Assistant, Kanteshwar, Nizamabad and the Commissioner, Nizamabad Municipality as per letter dated 08-03-2004 by the Collector and District Magistrate. Accordingly, the Superintendent of Police gave no objection from the Traffic or Law and Order point on 19-03-2004, followed by similar such no objection from the Revenue Divisional Officer on 11-03-2004 and Assistant Divisional Fire Officer on 09-03-2004 and the Village Assistant, Kanteshwar, Nizamabad on 09-03-2004. The Commissioner of Municipality, Nizamabad also granted no objection for establishing such outlet, subject to obtaining the building permission at the time of construction by paying requisite fee. Having regard to such no objection certificate issued, the Additional District Magistrate, Nizamabad, had issued no objection on 01-04-2004 for obtaining licence from the Chief Controller of Explosives, Chennai licence. Therefore, it is their case that there is sufficient compliance of all the requirements as per law and thus the petitioner cannot have any grievance, nor the petitioner can seek any enforcement of the alleged guidelines, which have no statutory force, nor enforceable in the Court of law.

The learned Counsel for the petitioner strenuously contended that there cannot be any such fresh outlet , more so when petitioner's outlet is existing and even otherwise such establishment is contrary to the guidelines issued by the respondents themselves, apart from causing several traffic hazards and inconvenience to the public.

The learned Government Pleader and the other Counsel appearing for the contesting respondents sought to repel the aforesaid contentions and submitting that the petitioner apparently afraid of rival business and therefore there are absolutely no bonafidies in her claim, nor can she seek the enforcement of such guidelines, which have no statutory force.

Considering the submissions made and on perusal of the material the question which falls for consideration is, whether objection of the petitioner in regard to the

establishment of fresh outlet is sustainable in law?

There is no dispute to the fact that the petitioner having existing retail outlet, which has been initially given to her father-in-law as freedom fighter and subsequent to death of him and also petitioner's husband, she is carrying on the business. On the same road, apparently, the contesting respondents have applied for the permission, which has been granted after obtaining the necessary no objection of various authorities, as pointed out. The main plank of the petitioner's contention is reliance placed on the guidelines issued on 25-09-2003 by the respondents themselves, which contemplate as pointed out by the petitioner in clauses 10.6 to 10.10 certain requirements. The case of the petitioner is that proposal of the contesting respondents falls within the mischief of the said guidelines and therefore there could not have been any such valid permission. Further it is also her case that the respondents have not taken into consideration various traffic hazards and other problems, which will be created, more so in view of existence of various educational institutions, temples etc., in and around. Across the bar reliance was placed on the unreported decision of this Court in W.P.No.21384 of 1999 dated 15-11-1999 and in B.V.V.S.S.NARAYANA v. STATE LEVEL CO-ORDINATOR FOR PETROLEUM PRODUCTS, wherein considering the very same guidelines, this Court after holding that said guidelines have no statutory force and therefore the question of invoking the exult jurisdiction under Article 226 of the Constitution of India does not arise, consequently dismissed the writ petitions.There cannot be any serious dispute in regard to the said propositions, nor any further light has been shown on behalf of the petitioner to show that the guidelines have any statutory force. In the absence of any such, I do not find any variance with the reasoning adopted by two learned Judges of this Court.

Further, in RAJAPPA KAWATI Vs. G.HANUMANTHA RAO a division bench of this Court considering similar such case for grant of permission under the Motor Vehicles Act, 1988 has held that business rival cannot be permitted to object to the grant of permit to another person.

In MITHILESH GARG v. UNION OF INDIA case considering similar such case the Supreme Court has held that there cannot by any justification in a stand taken to oppose the forthcoming new operators in the field as competitors.

Having regard to the aforesaid principles, I have no other go but to held that the petitioner's case do not fall in any of the permitted limits to call for any interference under Article 226 of the Constitution of India, more so in the absence of any statutory rules. Except the above, no other aspect has been raised on behalf of the petitioner.

Hence, I do not find any merits in the Writ Petition and the same is, accordingly, dismissed. No costs.

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B.PRAKASH RAO, J.

Dated 01-11-2004.

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